

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-137877-13

Date:

March 06, 2014

Legend

Distributing =

Controlled =

Date 1 =

BusinessA =

BusinessB =

BusinessB =
Assets

#X =

Dear :

This letter responds to your August 23, 2013 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction (defined below) (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code, (the “Code”) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

FACTS

Distributing is a cash method taxpayer with a taxable year ending Date 1. Distributing has one class of stock outstanding. The Distributing stock is held by #X shareholders (the “Shareholders”).

Distributing engages in BusinessA and BusinessB. Distributing has submitted financial information indicating that BusinessA and BusinessB have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTION

Distributing intends to separate BusinessA and BusinessB. To do so Distributing proposes to undertake the following steps pursuant to a single plan (the “Proposed Transaction”):

- (i) Distributing will form Controlled with a single class of stock. Controlled will have a number of shares equal to the outstanding Distributing shares.
- (ii) Distributing will transfer BusinessB Assets to Controlled in exchange for all of the Controlled stock and the assumption of certain liabilities of Distributing related to BusinessB (the “Contribution”).

- (iii) On the same day as the Contribution, Distributing will distribute the Controlled stock pro rata to the Distributing Shareholders (the "Distribution").

Following the Distribution, Controlled will operate BusinessB and Distributing will operate BusinessA.

REPRESENTATIONS

The following representations have been made in connection with the Proposed Transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- (b) The five years of BusinessA financial information submitted on behalf of Distributing is representative of the present operation of BusinessA and there have been no substantial operational changes in BusinessA since the date of the last financial statements submitted.
- (c) The five years of BusinessB financial information submitted on behalf of Controlled is representative of the present operation of BusinessB and there have been no substantial operational changes in BusinessB since the date of the last financial statements submitted.
- (d) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently with its separate employees.
- (e) The Distribution is being carried out for the following business purposes: to facilitate providing equity interests to employees and for competitive purposes. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.
- (f) The transaction is not being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both.
- (g) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (within the meaning of section 357(d)) by Controlled.
- (h) The total adjusted basis and fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing, if any, that are discharged or extinguished in connection with the

- Contribution, and (iii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)), if any, received by Distributing from Controlled in connection with the Contribution.
- (i) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
 - (j) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.
 - (k) The liabilities assumed (within the meaning of section 357(d)) in the Proposed Transaction were incurred in the ordinary course of business and are associated with the assets being transferred.
 - (l) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
 - (m) Payments made in connection with all continuing transactions between Distributing and Controlled, if any, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
 - (n) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
 - (o) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution.
 - (p) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of any Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that either (i) was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution; or (ii) is attributable to distributions on Distributing stock or securities that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

- (q) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (r) Immediately after the transaction (within the meaning of section 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (s) No investment credit determined under section 46 has been (or will be) claimed with respect to any property being transferred between Distributing and Controlled.

RULINGS

Based solely on the information submitted and the representations made, we rule as follows:

- (1) The Contribution followed by the Distribution will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be a “party to a reorganization” within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contribution (sections 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled on the Contribution (section 1032(a)).
- (4) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of such asset in the hands of Distributing immediately before the Contribution (section 362(b)).
- (5) Controlled’s holding period in each asset received from Distributing in the Contribution will include the holding period during which Distributing held such asset (section 1223(2)).
- (6) No gain or loss will be recognized by Distributing on the Distribution (section 361(c)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) the Shareholders on the Distribution (section 355(a)(1)).
- (8) The basis of the Distributing stock and Controlled stock in the hands of each Shareholder after the Distribution will equal the basis of the Distributing stock

held by the Shareholder immediately prior to the Distribution, allocated between the Distributing and Controlled stock in proportion to the fair market value of each immediately after the Distribution in accordance with Treas. Reg. § 1.358-2(a) (sections 358(a), (b), and (c)).

- (9) The holding period of the Controlled stock received by each Shareholder in the Distribution will include the holding period of the Distributing stock on which the Distribution is made, provided that the Distributing stock is held as a capital asset in the hands of the Shareholder on the date of the Distribution (section 1223(1)).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10.

CAVEATS

No opinion is expressed about the federal income tax treatment of the Proposed Transaction under other provisions of the Code or regulations, or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Proposed Transaction satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Proposed Transaction is used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d); or
- (iii) Whether the Proposed Transaction is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return for which it is relevant. Alternatively, any taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Thomas I. Russell

Thomas I. Russell
Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)

cc: